TAN SRI DATO' SRI PANGLIMA HJ ANNUAR HJ MUSA

v.

PERSATUAN BOLA SEPAK MALAYSIA & ANOR

HIGH COURT MALAYA, SHAH ALAM
HADHARIAH SYED ISMAIL J
[ORIGINATING SUMMONS NO: 24-641-06-2012]
6 FEBRUARY 2014

CIVIL PROCEDURE: *Proceedings - Irregular - Charges for statement made in press conference - Statements containing grievances and criticisms made without consent of Football Association of Malaysia ('FAM') - Contravention of article 88 of FAM Statute - Hearing held before Disciplinary Committee - Plaintiff not represented - Application to nullify entire proceedings before Disciplinary Committee - Whether proceeding flawed, invalid and void - Whether tainted with irregularities - Whether there was fundamental breach of natural justice*

The plaintiff, the Deputy President of Football Association of Malaysia ('FAM'), was invited to officiate an event. In a press conference following the event, the plaintiff responded to the question by reporters on the performance of the national team ('Harimau Malaya') and the statement was reported by Harian Metro in an article entitled 'Harimau Malaya Longlai' 'Anuar bimbang prestasi pasukan negara untuk pertahankan Piala AFF'. FAM charged the plaintiff with two charges on the basis that the press statement was made without the consent of FAM and his statements contained grievances and criticisms against the management of FAM and Harimau Malaya, an act which was in contravention of art. 88 of the FAM Statute. The hearing of the charges was held before the Disciplinary Committee ('DC') meeting and under the FAM Statute, the plaintiff would be represented by the Secretary General of FAM ('the second defendant'). However, there was a conflict of interest as it was the second defendant who had initiated the framing of the charges against the plaintiff. The DC found the plaintiff guilty of both charges and suspended him for 30 months. The sentence imposed upon the plaintiff was not appealable and he was prohibited from being involved in any football activities. In the present application, the plaintiff sought to nullify the entire proceedings before the DC by the first defendant against him as it was alleged that the disciplinary proceeding was tainted with irregularities and was flawed, invalid and void due to

fundamental breaches of natural justice. Against the second defendant, the plaintiff sought declaration that the second defendant had acted *mala fide* in drafting, preparing and approving the two charges. The plaintiff contended that the charge was defective and submitted that (i) the time and place the statement was given by the plaintiff was not stated; (ii) the very statement alleged to contain 'kilanan, rungutan atau perasaan tidak puas hati' was not mentioned at all in the charge; (iii) the potential punishment provided under the FAM Code itself was conspicuously missing; and (iv) the 'Titah' KDYTM Tuanku Timbalan Presiden was not the decision of the EXCO meeting. The issues that arose for the court's adjudication were: (i) whether there was a selective prosecution by the plaintiff; (ii) whether there were breaches of natural justice as he was denied the right to be represented; the charges could not be proved; and the sentences imposed were ambiguous; (iii) whether the first defendant failed to discharge the burden of proof; and (iv) whether the second defendant had acted *mala fide*.

Held (dismissing application with costs):

(1) The issue of selective prosecution was a non-starter and must fail. Even though the plaintiff claimed that he was not the only FAM's official who made a press statement to the media with regards to FAM's administration and that there were others who made worse statements, the plaintiff was charged because there was concrete evidence. From the various actions taken by FAM against its officials, with the plaintiff, there was no selective prosecution. FAM had the tendency to charge its officials whenever criticisms were made touching its administration. It is not whose who to be charged. The message sent by FAM by these prosecutions was that any grievances by its members is an internal matter and must be voiced through a proper channel and not through the media. (paras 7 & 8)

(2) The plaintiff's argument that the amendment was done on the hearing day itself, giving him no time to defend, was baseless. Amendment could be made at any time. The plaintiff had 19 days to prepare his defence. The plaintiff knew the nature of the charges against him and the case was not complicated. (para 11)

(3) In order to determine whether the plaintiff's statement contained 'kilanan, rungutan atau perasaan tidak puas hati', the statement must be considered, not the whole article. The title of the article was nothing but a topic given to the overall statement made by the plaintiff. It was inaccurate for the plaintiff to rely on the title of the article to deny making a statement voicing his dissatisfaction. Whilst the plaintiff was entitled to form his opinion on the performance of 'Harimau Malaya', he was prohibited by art. 88 from criticising the national football team without the consent of FAM. The plaintiff failed to prove he had obtained a written consent from FAM. (para 14)

(4) The second charge was primarily premised on the 'Pekeliling' issued by FAM based on 'Titah' KDYTM Tuanku Timbalan Presiden in FAM Exco meeting. The FAM's secretariat had decided to adopt the 'Titah' KDYTM Tuanku Timbalan Presiden into a 'Pekeliling' which was binding on all officials and members of FAM. They were perfectly entitled to do so. The 'Pekeliling' was dated 14 February 2012 while the second charge was dated 14 March 2012 and was caught by the 'Pekeliling'. The second charge was correct. (para 22)

(5) The plaintiff was not prejudiced in any way and no miscarriage of justice had taken place. There was no breach of natural justice. The right of an accused person to a legal representation in a disciplinary case was not an absolute right. Instead, it was the discretionary power of the tribunal hearing on the case whether to grant a legal representation. An accused person ought to be permitted to have a lawyer if that would assist him. It was not correct for the plaintiff to say FAM deprived the plaintiff the right to be represented. The second defendant could not represent the plaintiff because there was a conflict of interest. If the plaintiff insisted on having someone to represent him, he could have raised the issue before FAM Secretariat for them to consider. However, this was not done. (para 29)

(6) The prosecutor bore the burden of proving the case but this was not a criminal trial. The offending words was tantamount to criticising the performance of Harimau Malaya. Thus, a *prima facie* case had been made out against the plaintiff on

A both charges. The burden then shifted to the plaintiff to exculpate himself. There was no procedural impropriety at the hearing. (para 32)

(7) The plaintiff's allegation of *mala fide* did not exist. In the B whole episode, the second defendant had acted in his official capacity as the Secretary General of FAM. As the Secretary General, he acted as the ears and eyes of FAM. When there is a press statement where FAM is criticised and this received wide media coverage, the second defendant could not just C close his eyes and shut his ears. The decision to charge the plaintiff was not a personal decision of the second defendant but it was FAM's decision. The second defendant was merely carrying out his official duty in wanting to see the charges and the disciplinary proceedings carried out fairly and impartially. D (para 36)

Case(s) referred to:

Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal [2006] 1 CLJ 577 FC ***(refd)***

Fraser v. Mudge [1975] 3 All ER 78 ***(refd)***

E

For the plaintiff - Yusfarizal Yusuf (Mohd Zaid Daud & Azri with him); M/s Zulpadli & Edham

For the defendants - Richard Bong (Tania, Syed Ismat & Kevin Tan with him); M/s Bong & Co

F *Reported by Najib Tamby*

JUDGMENT

G **Hadhariah Syed Ismail J:**

Introduction

[1] The plaintiff was suspended for 30 months by the Football Association of Malaysia (FAM) for making a press statement to H the media criticising the performance of the national football team, Harimau Malaya. The sentence imposed upon him is not appealable. The plaintiff came to court seeking for various declaratory orders to nullify the entire proceeding in the Disciplinary Case No. 27/2012 by the first defendant against him. I

The plaintiff alleged the disciplinary proceeding is tainted with irregularity, flawed, invalid and void due to fundamental breach of natural justice. As against the second defendant, the plaintiff seeks declaration that the second defendant had acted *mala fide* in drafting, preparing and approving the two charges and a letter dated 2 April 2012.

[2] The Declaratory Orders Prayed For:

1. Suatu deklarasi bahawa Pertuduhan Pertama terhadap plaintif yang dikenakan oleh Defendan Pertama di bawah Kes Tatatertib Bil 27/2012 melalui surat bertarikh 16.3.2012 adalah cacat, tidak sah dan terbatal.
2. Suatu deklarasi bahawa Pertuduhan Kedua terhadap plaintif yang dikenakan oleh Defendan Pertama di bawah Kes Tatatertib Bil 27/2012 melalui surat bertarikh 16.3.2012 adalah cacat, tidak sah dan terbatal.
3. Seterusnya atau secara alternatif, suatu deklarasi bahawa keseluruhan tatacara pertuduhan Kes Tatatertib Bil 27/2012 terhadap plaintif dalam bentuk yang terkandung di dalam surat Defendan Pertama bertarikh 16.3.2012, serta perbicaraan tatatertib pada 4.4.2012 dan hukuman yang dikenakan terhadap plaintif oleh defendan pertama pada 5.4.2012 telah tidak mematuhi prinsip Keadilan asasi yang menjadikan keseluruhan pertuduhan, perbicaraan, keputusan dan hukuman kes Tatatertib terhadap plaintif tersebut sebagai cacat, tidak sah dan terbatal.
4. Seterusnya dan/atau secara alternatif, suatu deklarasi bahawa keseluruhan tatacara perbicaraan Kes Tatatertib Bil 27/2012 terhadap plaintif dalam bentuk yang terkandung di dalam surat Defendan Pertama bertarikh 16.3.2012, serta perbicaraan tatatertib pada 4.4.2012 dan hukuman yang dikenakan terhadap plaintif oleh Defendan Pertama pada 5.4.2012 telah tidak mematuhi Statut Persatuan Bolasepak Malaysia dan Kod Tatatertib Persatuan Bolasepak Malaysia yang menjadikan keseluruhan pertuduhan, perbicaraan, keputusan dan hukuman kes Tatatertib terhadap plaintif tersebut sebagai cacat, tidak sah dan terbatal.
5. Seterusnya dan/atau secara alternatif, suatu deklarasi bahawa Defendan Pertama telah gagal sama sekali untuk memuaskan beban membukti ke atas pertuduhan-pertuduhan terhadap Plaintif di dalam perbicaraan Kes Tatatertib Bil 27/2012 pada 4.4.2012.

A 6. Seterusnya dan/atau secara alternatif, suatu deklarasi bahawa sabitan kesalahan terhadap Pertuduhan Pertama dan Pertuduhan Kedua yang diputuskan terhadap plaintif oleh Defendan Pertama pada mesyuarat perbicaraan Kes Tatatertib Bil 27/2012 pada 4.4.2012 adalah tidak sah dan terbatal.

B 7. Seterusnya dan/atau secara alternatif, suatu deklarasi bahawa keputusan Defendan Pertama yang terkandung di dalam surat bertarikh 5.4.2012 bahawa plaintif telah didapati bersalah di bawah kesalahan-kesalahan yang berlainan daripada yang terkandung di dalam surat Pertuduhan Kes Tatatertib Bil C 27/2012 bertarikh 16.3.2012, serta menjatuhkan hukuman-hukuman yang tidak sejajar dengan pertuduhan asal adalah suatu kecacatan yang serius yang menjadikan keseluruhan keputusan dan hukuman terhadap plaintif sebagai tidak sah dan terbatal.

D 8. Suatu deklarasi bahawa Defendan Kedua, sebagai Ketua Sekretariat Defendan Pertama dengan menderaf, menyediakan dan/atau meluluskan Pertuduhan Pertama dan Pertuduhan Kedua yang mengandungi kecacatan yang serius telah bertindak secara *mala fide*.

E 9. Suatu deklarasi bahawa Defendan Kedua, dalam menyedia dan meluluskan surat bertarikh 2.4.2012 kepada plaintif yang antara lainnya melarang plaintif daripada membawa wakil tertuduh ke mesyuarat Jawatankuasa Tatatertib bagi membantu plaintif telah bertindak demikian bagi mengelirukan plaintif dan F berniat *mala fide*.

10. Seterusnya dan/atau secara alternatif, suatu deklarasi bahawa dengan terbayarnya kos Mesyuarat Jawatankuasa Tatatertib pada 4.4.2012 sebanyak RM2,124.00 sebagaimana yang diarahkan oleh Defendan Pertama, maka hukuman tatatertib G yang dikenakan terhadap plaintif iaitu tidak boleh melibatkan diri dalam aktiviti bolasepak adalah dengan itu terbatal.

11. Seterusnya dan/atau secara alternatif, suatu injunksi untuk menghalang Defendan Pertama dan Defendan Kedua daripada menghalang plaintif daripada menjalankan tugasnya sebagai H Timbalan Presiden Defendan Pertama dan lain-lain jawatannya dalam Defendan Pertama serta melibatkan diri dalam segala aktiviti bolasepak.

Facts

I **[3]** The plaintiff is the Deputy President of Football Association of Malaysia (FAM), elected for the term 2010-2014. He is also the President of the Kelantan Amateur Football Association

(KAFA) since 2007. The second defendant is the Secretary General of FAM. The plaintiff was invited to officiate an event namely "Bengkel Pemasaran dan Pembangunan Kelab Penyokong" organised by Malaysia Super League Sdn Bhd, an event sanctioned by FAM on 12 March 2012 and 13 March 2012. A press conference was tentatively set to take place on 12 March 2012 after the officiating ceremony. However, the press conference only took place on 13 March 2012 after the closing ceremony. During the press conference on 13 March 2012, the plaintiff was asked by reporters on the performance of National Team, "Harimau Malaya". He gave his statement. His statement was reported by Harian Metro on Wednesday, 14 March 2012 in the article titled "Harimau Malaya Longlai" "Anuar bimbang prestasi pasukan negara untuk pertahankan Piala AFF". On the basis the press statement was made without the consent of FAM and his statements contained grievances and criticisms against the management of FAM and the national football team, an act in contravention of art. 88 of the FAM Statute, FAM had charged the plaintiff with two charges.

Pertuduhan Pertama

Bahawasanya, Yang Berbahagia Tan Sri, Timbalan Presiden Persatuan Bolasepak Malaysia, iaitu Pegawai Persatuan mengikut Tafsiran 2.2.21 dan 2.1.22, Kod Tatatertib FAM Edisi 2011, selepas ini disebut sebagai Tertuduh, telah membuat kenyataan secara lisan atau bertulis kepada media cetak atau media elektronik atau menyumbangkan apa-apa rencana kepada media tanpa mendapat izin secara bertulis atau lisan mengikut Artikel 88 Statut FAM, bahawa rencana tersebut adalah untuk menyampaikan kilanan, rungutan atau menyampai perasaan tidak puashati mengenai urusan pentadbiran hal ehwal FAM apabila Tertuduh membuat kenyataan akhbar di dalam akhbar Harian Metro pada hari Rabu, 14 Mac 2012 di muka surat 68 dengan tajuk:

"Harimau Malaya Longlai".

"Anuar bimbang prestasi pasukan Negara untuk pertahankan Piala AFF".

Kenyataan akhbar tersebut telah melanggari Perkara 4.5.8 (i), Kod Tatatertib FAM Edisi 2011 dan dianggap satu kesalahan serius mengikut Perkara 5.8.1 Kod Tatatertib FAM apabila tersiar dalam Buletin Utama TV3 pada 13 Mac 2012 dan Astro Arena saluran 801 pada jam 7.30 malam dan 11.00 malam pada 13 Mac 2012

A serta pada 7.00 petang ulangan pada 14 Mac 2012 dan jika disabitkan kesalahan boleh dikenakan hukuman mengikut Kod Tatatertib FAM Edisi 2011 atau mengikut Perkara 6.2.2, Kod Tatatertib FAM Edisi 2011.

Pertuduhan Kedua

B

Bahawasanya, Tertuduh, telah membuat kenyataan secara lisan atau bertulis kepada media cetak atau media elektronik atau menyumbangkan apa-apa rencana kepada media tanpa mendapat izin secara bertulis atau lisan mengikut Artikel 88 Statut FAM, bahawa rencana tersebut adalah bercanggah, mempertikai, C mempersoal atau fakta yang diberikan adalah tidak tepat atau bercanggah dengan keputusan Mesyuarat Eksekutif FAM ke 4 pada 4 Februari 2012 serta Pekeliling FAM berkaitan dengan peringatan daripada KDYTM Tuanku Timbalan Presiden, FAM semasa Mesyuarat Eksekutif FAM ke 4 pada 4 Februari 2012 D dan rujuk surat FAM/EXCO ke 4/3/DAAA/AFD bertarikh 14 Februari 2012, apabila Tertuduh membuat kenyataan akhbar di dalam akhbar Harian Metro pada hari Rabu 14 Mac 2012 di muka surat 68 dengan tajuk:

"Harimau Malaya Longlai".

E

"Anuar bimbang prestasi pasukan Negara untuk pertahankan Piala AFF".

Perkara yang sama juga telah dibangkitkan oleh Ke Bawah Duli Yang Teramat Mulia Tengku Mahkota Pahang, Tuanku Timbalan F Presiden FAM semasa mempengerusikan Mesyuarat Jawatankuasa Eksekutif FAM telah mengatakan:

> Baginda melahirkan rasa bimbang terhadap keadaan yang berlaku di dalam padang dan di luar padang sejak kebelakangan ini dan menyebut bahawa FAM banyak G menerima kritikan, namun demikian ada juga pujian yang dilontarkan kepada FAM berkaitan dengan prestasi dan keupayaan Pasukan Kebangsaan. Apa yang menyedihkan saya ialah kritikan-kritikan ini datangnya daripada kita sendiri dan juga dibentangkan kepada pihak media massa. Ini H seolah-olah kita menelanjangi diri sendiri dan lebih terdedah kritikan namun kelemahan permasalahan tidak juga tercapai.

(Rujuk perenggan ke 2 Titah KDYTM Tuanku Pengerusi Mesyuarat Jawatankuasa Eksekutif FAM).

I

Seterusnya dalam titah yang sama, Baginda menyarankan:

> ... Kita semua hendaklah menghormati keputusan Jawatankuasa-Jawatankuasa ini dan sekiranya keputusan Jawatankuasa tidak memuaskan, maka keputusan tersebut boleh dibincangkan di peringkat Jawatankuasa Eksekutif atau semasa perjumpaan bulanan bersama saya.

(Rujuk ayat akhir perenggan ke 3, Titah KDYTM Tuanku Pengerusi Mesyuarat Jawatankuasa Eksekutif FAM).

Dikembarkan cabutan Minit Agenda 2, Mesyuarat Jawatankuasa Eksekutif, FAM pada 4 Februari 2012.

Perlu dinyatakan bahawa Jawatankuasa Pengurusan Pasukan Kebangsaan yang dipengerusikan oleh ke bawah Duli Yang Maha Mulia Sultan Pahang, Tuanku Presiden FAM adalah Pegawai FAM yang lebih mempunyai hak dalam segala urusan, termasuklah membuat kenyataan akhbar dan juga mengenai prestasi Pasukan Kebangsaan.

Di dalam pekeliling yang dikeluarkan oleh FAM bertarikh 14 Februari 2012 iaitu menerangkan peringatan KDYTM Tuanku Timbalan Presiden FAM semasa mempengerusikan mesyuarat Eksekutif FAM melalui surat FAM/EXCO Ke 4/3/DAA/AFD di para 3.3 telah jelas menyatakan:

> Sebarang kilanan atau apa-apa keputusan yang dibuat oleh Badan Persatuan yang tidak memuaskan hati mana-mana pihak, ia hendaklah disampaikan kepada Sekretariat Agung atau dirujuk kepada Presiden atau Timbalan-Timbalan Presiden FAM untuk tindakan selanjutnya dan tidak boleh serta dilarang sama sekali dibawa kepada pihak media massa.

Oleh yang demikian, kenyataan akhbar oleh Tertuduh di dalam akhbar Harian Metro pada hari Rabu 14 Mac 2012 di muka surat 68 adalah melanggari Perkara 4.5.8 (i) Kod Tatatertib FAM Edisi 2011 dan dianggap satu kesalahan serius mengikut Perkara 5.8.1 Kod Tatatertib FAM apabila tersiar dalam Buletin Utama TV3 pada 13 Mac 2012 dan Astro Arena saluran 801 pada jam 7.30 malam dan 11.00 malam pada 13 Mac 2012 serta pada 7.00 petang ulangan pada 14 Mac 2012 dan jika disabitkan kesalahan boleh dikenakan hukuman mengikut Kod Tatatertib FAM Edisi 2011 atau mengikut Perkara 6.2.2, Kod Tatatertib FAM Edisi 2011.

A **[4]** The plaintiff admitted that he gave the statement as quoted in the Harian Metro's article. But he stated that the title of the Harian Metro's article is not his word. The hearing of the charges was held before the Disciplinary Committee Meeting on 4 April 2012. Under the FAM Statute, the plaintiff shall be represented B by the Secretary General of FAM. But, in this case, the Secretary General (the second defendant herein) could not represent the plaintiff as he was the one who had initiated the framing of the charges. Hence, there was a conflict of interest. For that reason, the plaintiff was not represented in the proceeding. Nevertheless, C the plaintiff called four witnesses, namely Tuan Haji Kamarudin bin Abdullah, Tuan Haji Rosamdi bin Ismail, En Amir Abdillah and En Stuart Ramalingam. FAM did not call any witness in the proceeding. After a full hearing before the Disciplinary Committee, the plaintiff was found guilty in respect of the first charge and D sentenced him to a two years suspension. The Disciplinary Committee also found the plaintiff guilty for the second charge and sentenced him to a six months suspension. The plaintiff was also informed *via* a letter dated 5 April 2012 from FAM that the said sentences handed out were minimum sentences under the E FAM Disciplinary Code 2011th Edition and therefore they were not appealable to the FAM Appeals Committee pursuant to item 7.1.2 (xiii) of the FAM Disciplinary Code 2011th Edition. In the same letter, the plaintiff was further informed that he was prohibited from being involved in any football activities.

F

[5] The plaintiff challenged the entire disciplinary proceedings were flawed, invalid and void. He raised the following issues:

(a) Selective prosecution by the plaintiff.

G (b) Defective charges.

(c) Breach of natural justice.

(d) The first defendant failed discharge the burden of proof.

H (e) *Mala fide* by the second defendant.

[6] I shall deal with the issues one by one.

I

Selective Prosecution

[7] The plaintiff alleged that the decision by FAM to frame a charge against him by itself is a breach of natural justice. The reason being, he is not the only FAM's official who makes a press statement to the media with regards to the FAM's administration. There are others who made a worse statement than the plaintiff. The plaintiff had exhibited several paper cuttings, which shows that other FAM's official had made statement in media complaining on the FAM's administration. This includes statement by Datuk Hamidin Mohd Amin (Vice President), the second defendant himself, KDYTM Tuanku Timbalan Presiden, Ismail Ibrahim (Coach Harimau Muda B) and Tunku Ellie Badariah Tunku Ahmad (Vice President PBSWM). However, FAM had not charged any of these individuals. The question posed by the plaintiff is why only he was charged and not the others? There is no answer. One can only guess. The only logical explanation is probably there is not enough evidence to support a charge. Any way, FAM reply to this issue. They say they charged the plaintiff because there is concrete evidence. I accept FAM's answer. Lately, there was a wide coverage or concerned raised in the media by certain quarters that art. 88 of FAM Statute should be scrapped. The national dailies even listed the names of the individuals charged by FAM for violating of art. 88. These individuals are listed below:

Year	Name	Offence	Punishment
2009	B Sathianathan (Former National Coach)	Said "M-League is Not Football" during a post-match conference after the Asian Cup qualifiers thrashing to UAE 5-0 in Kuala Lumpur	6 months ban
	Reduan Abdullah (Former Felda United Coach)	Questioned FAM's fitness test for national players	1 year ban and RM4,000 fine
2010	B Sathianathan (Former Kelantan Coach)	Complained of unfair scheduling of M-League fixtures	6 months ban
	Che Ku Marzuki (Former T-Team Coach)	Complained of unfair scheduling of M-League fixtures	6 months ban and RM2,000 fine

	Tan Sri Annuar Musa (FAM Deputy President)	Criticised the national team's performance	30 months ban
2011	Wan Jamak Wan Hassan	Criticised the standard of (Former Kedah Coach)	7 match ban refereeing
	Abdul Rahman Ibrahim (PKNS FC Coach)	Criticised the standard of refereeing	6 match ban
2013	Datuk Seri Shahidan Kassim (Perlis FA President)	Wanted FAM revamped and expressed regret over failure to deal with match fixing allegations	30 months ban and RM39,000 fine
	Tunku Ismail Sultan Ibrahim (Johor FA President)	Criticised the standard of refereeing and questioned FAM's credibility in curbing	6 months ban and RM18,000 fine match fixing

[8] From the various actions taken by FAM against its officials, I could not agree with the plaintiff that there was a selective prosecution. The truth seems to be otherwise. FAM had the tendency to charge its officials whenever there is criticism made touching its administration. It is not whose who to be charged. The message sent by FAM by these prosecutions is any grievances by its member is an internal matter and must be voiced through a proper channel. Not through a media. On those grounds, I find the issue of selective prosecution alleged by the plaintiff is a non-starter and must fail.

Defective Charges

[9] The first charge was formulated pursuant to art. 88 of the FAM Statutes and para. 4.5.8 (i) of FAM Disciplinary Code 2011th Edition, punishable under Item 6.2.2 of the FAM Code.

> Article 88 of FAM Statutes states:
>
> Except for routine releases to the press by the President or the General Secretary, no official, coaches of FAM or referee or any Member or Associate Member, or player registered or employed with any Member or Associate Member, unless sanctioned by the congress shall contribute any article on the management of affairs of FAM, vent grievances, supposed or real or right criticisms hostile to FAM (Member or Associate Member).

Item 4.5.8 (i) of FAM Disciplinary Code 2011th Edition states: A

Pegawai dan Pemain tidak boleh membuat sebarang kenyataan samada secara lisan atau bertulis kepada media cetak atau media elektronik atau menyumbangkan apa-apa rencana kepada media tanpa mendapat izin secara bertulis atau lisan mengikut Artikel 88 Statut FAM serta Jawatankuasa berpuashati apabila kenyataan atau sumbangan rencana tersebut: B

i. Menyentuh atau menyampaikan kilanan, rungutan atau menyampaikan perasaan tidak puashati mengenai urusan pentadbiran hal ehwal FAM atau pengelolaan Liga Malaysia atau lain-lain pertandingan yang direstui atau diluluskan oleh FAM. C

Item 6.2.2 of FAM Disciplinary Code 2011th Edition states:

Hukuman terhadap Pemain atau Pegawai D

1. Amaran keras.
2. Denda maksimum RM50,000.00 bagi pegawai dan maksimum RM25,000.00 bagi pemain.
3. Denda maksimum RM10,000.00 untuk kategori Pemain Belia 17 tahun dan ke bawah. E
4. Menjatuhkan lain-lain hukuman seperti yang diperuntukkan di dalam Kod.

[10] The defects of the charges complained of by the plaintiff are: F

(i) The time and place the statement was given by the plaintiff was not stated.

(ii) The very statement alleged to contain "kilanan, rungutan atau perasaan tidak puashati" was not mentioned at all in the charge. G

(iii) The potential punishment provided under the FAM Code itself was conspicuously missing.

H

(iv) The "Titah" KDYTM Tuanku Timbalan Presiden is not a "keputusan" of EXCO meeting.

[11] In relation to complaint on item (i) above, FAM replied an oral amendment was made to the two charges before the commencement of the hearing with regard to the place, date and time of the press or media conference. The amended two charges I

were then read out again to the plaintiff and when he was asked if he understands the charges, he replied in the affirmative. In short, FAM say they are aware of the omission and the same had been rectified. The plaintiff seems to have taken an issue that the amendment was done on the hearing day itself, giving him no time to defend himself. I reject this argument as baseless. Amendment can be made at any time. The fact revealed the plaintiff had 19 days to prepare his defence. On the facts and circumstances of this case, I hold the plaintiff knew the nature of the charges against him. The case is not complicated. The issue before the Disciplinary Committee is whether the article tantamount to criticising FAM or not. The plaintiff does not need more than 19 days to prepare his defence.

[12] With regard to complaint on item no. (ii) above, the plaintiff say the exact statement of the plaintiff, which purportedly contained "kilanan, rungutan atau perasaan tidak puashati" was never stated in the first charge. In fact what was stated in the first charge was only the title of Harian Metro's article which was not uttered by the plaintiff. The first charge stated as follows:

> ... apabila tertuduh membuat kenyataan akhbar di dalam akhbar Harian Metro pada hari Rabu, 14 Mac 2012 di muka surat 68 dengan tajuk:
>
> **"Harimau Malaya longlai", "Annuar bimbang prestasi pasukan negara untuk pertahankan Piala AFF".**

[13] The plaintiff submits that the above sentence which was in bold was only the imagination of the Harian Metro's reporter and it drastically changed the content of the plaintiff's statement. Thus, the plaintiff also submits that he was not given a clue in the charge to enable him to prepare his defence. To add salt to the injury the plaintiff further submits that the first defendant never called any witness to testify on whether the statement made by the plaintiff in the press conference could amount to "kilanan, rungutan atau perasaan tidak puashati". The plaintiff maintain his stand that he only gave a general comment. Contending the first charge was rightly formulated, FAM say its Disciplinary Committee has not only opposed to the title of the article but the entire article itself. Parties are not in dispute as to the contents of the

entire article. The transcript of the particular answer or statement given by the plaintiff which were in breach of 4.5.8 (i) FAM Disciplinary Code is as follows:

Soalan : Tan Sri bercakap pasal national team, sebagai Timbalan Presiden FAM, first Tan Sri tengok macam mana prestasi national team sekarang sejak kebelakangan ini imej banyak keputusan yang tidak memuaskan.

TSAM : Ya, terus terang saya katakan secara peribadinya prestasinya tidak menentu ... Dan kadangkala kita dengar alasan yang tidak semua orang boleh terima. Alasan setiap kali kalau tidak hendak cuba, nak cuba, bola sepak ini adalah benda yang berjalan sepanjang masa. Kita tidak boleh kata kita buat ini adalah untuk 4 tahun yang akan datang. No! Tidak boleh!

[14] The defendant submits the words uttered by the plaintiff as quoted above are easy enough to be understood by any person. The defendant further submits those words in their natural meaning meant that the plaintiff is voicing his discontent and dissatisfaction on the performance of the national football team ie, Harimau Malaya. I could not agree more with the defendant. In order to determine whether the plaintiff's statement contained "kilanan, rungutan atau perasaan tidak puashati", the whole statement must be considered, not the title of the article. The title of the article is nothing but a topic given to the overall statement made by the plaintiff. Every article must have a topic. It is an eye catchy topic, like this particular article that attract the readers to read the contents of the article. So, it is inaccurate for the plaintiff to rely on the title of the article to deny making a statement voicing his dissatisfaction. The plaintiff cannot equate the first charge against him with a defamation suit. In a defamation suit, the party who alleged he was defamed had to identify the words complained of as defamatory of him. Here, the case to be answered by the plaintiff before the Disciplinary Committee is for making criticism on the national football team without first obtaining the consent of FAM. The plaintiff admitted making the statement. His defence was he was merely giving his general opinion without touching the administration of FAM. Whilst the plaintiff is entitled to form his opinion on the performance of

A "Harimau Malaya", he is prohibited by art. 88 from criticising the national football team without the consent of FAM. In this case, the plaintiff failed to prove he had obtained a written consent from FAM. Coming back to the words uttered by the plaintiff. As clear as day, the words "prestasi tidak menentu" and "alasan yang tidak
B semua orang boleh terima" could easily be interpreted as a critic to the performance of "Harimau Malaya". The plaintiff knew what the first charge is all about. The charge was read to him. Nowhere was it recorded that the plaintiff said he does not understand the first charge. In the final analysis, the plaintiff's argument that the
C first charge is defective because it does not contained the gist of the offence must fail.

[15] With regard to complaint about the non-existence of punishment provision, the plaintiff refer to item 5.1.1 of the FAM
D Code which states:

> Sesiapa sahaja yang dituduh melakukan kesalahan yang mana di bawah Kod memerlukan hukuman oleh Jawatankuasa, akan dimaklumkan secara bertulis atau surat pertuduhan mengenai tuduhan berasaskan laporan pegawai pertandingan atau lain-lain
E laporan yang berkaitan dan juga menyatakan hukuman dan denda mengikut Jadual 1 bersabit dengan tuduhan itu yang akan dihantar melalui pos, fax, telegram email atau dengan tangan kepada Tertuduh ...

F **[16]** The plaintiff alleged item 5.1.1 specifically requires that the sentence and fine pursuant to Jadual 1 in accordance with the allegations be stated in the charge. However, NONE of this punishment under Jadual 1 was ever mentioned in both the charges. The sentencing under Kesalahan 18.5 Jadual 1 and Kesalahan 18.3 Jadual 1 was only made known to the plaintiff
G after the hearing was concluded. I find this argument has no merit at all. Item 6.2.2 (iv) FAM Code reads:

> Menjatuhkan lain-lain hukuman seperti yang diperuntukkan di dalam kod ...

H **[17]** It follows therefore, the sentencing of the plaintiff under Kesalahan 18.5 and Kesalahan 18.3 of FAM Code is within the procedure stated in FAM Disciplinary Code 2011th Edition.

I

[18] At this juncture, it is appropriate for me to mention that the plaintiff also argued that the minimum sentence imposed on him was aimed to prevent him from appealing. I find this argument also has no merit. As far as sentencing is concerned, it is always the discretionary power of FAM. If maximum sentence is imposed there will also be allegation of too harsh. So, whichever way is taken, there will be allegation.

[19] Moving on to the final complaint which relates to the second charge. This charge was formulated for an offence under art. 88 of FAM Statutes and item 4.5.8 (iii) of FAM Code.

Item 4.5.8 (iii) of the FAM Code states:

> (iii) Bercanggah, mempertikaikan, mempersoal, atau fakta yang diberikan adalah tidak tepat, atau bercanggah atau salah dengan mana-mana keputusan Badan Persatuan mengikut Artikel 20, FAM Statutes iaitu keputusan Kongres, Jawatankuasa Eksekutif, Presiden, Jawatankuasa Darurat, Jawatankuasa Tetap, Sekretariat Agung dan Badan Kehakiman FAM.

[20] The second charge was primarily premised on the "Pekeliling" issued by FAM based on "Titah" KDYTM Tuanku Timbalan Presiden in FAM Exco meeting on 4 February 2012. It was stated in the second charge as follows:

> ... bercanggah, mempertikai, mempersoal atau fakta yang diberikan adalah tidak tepat atau bercanggah dengan keputusan Mesyuarat Eksekutif FAM ke-4 pada 4.2.2012 serta Pekeliling FAM berkaitan dengan peringatan daripada KDYTM Tuanku Timbalan Presiden FAM semasa Mesyuarat Eksekutif FAM ke-4 pada 4.2.2012 dan rujuk surat FAM/EXCO ke-4/3/DAAA/AFD bertarikh 14.2.2012 ...

[21] The plaintiff argued the "Titah" KDYTM Tuanku Timbalan Presiden is not a decision of the FAM Exco Meeting and the charge was baseless and misdirected. This issue was raised by the plaintiff himself at the hearing of the disciplinary proceeding. This is what the Disciplinary Committee's reply to the issue:

> Pertuduhan 2
>
> iv. Mengenai hujah pembelaan diri YBhg Tan Sri yang menyatakan Keputusan Mesyuarat EXCO FAM tidak boleh dilaksanakan sebelum disahkan oleh Mesyuarat EXCO adalah

A bertentangan dengan Artikel 36(5) Statut FAM yang menyatakan "Keputusan yang diambil oleh Jawatankuasa Eksekutif hendaklah berkuatkuasa serta merta, melainkan Jawatankuasa Eksekutif memutuskan sebaliknya".

Ini bermakna, tindakan pihak Sekretariat mengeluarkan Pekeliling B Rujukan FAM/EXCO/Ke-4/DAA/AFD bertarikh 14.2.2012 adalah betul dan Pekeliling tersebut adalah Peraturan mengikut takrif 23 Statut FAM. Oleh yang demikian, YBhg Tan Sri telah melakukan kesalahan di bawah Kesalahan 18.3 Kod Tatatertib FAM Edisi 2011.

C **[22]** Having read the "Pekeliling", it is my finding that the FAM's Secretariat had decided to adopt the "Titah" KDYTM Tuanku Timbalan Presiden into a "Pekeliling" which was binding on all officials and members of FAM. They are perfectly entitled to do so. The "Pekeliling" is dated 14 February 2012. The second D charge is dated 14 March 2012 and is caught by the "Pekeliling". Therefore, I find there is no basis in the plaintiff's complaint. With that, I hold the second charge is correct.

Breach Of Natural Justice

E **[23]** Under this heading, the issues raised by the plaintiff are:

(a) He was denied the right to be represented.

(b) The first defendant failed to prove the charges against the F plaintiff.

(c) The sentences imposed on the plaintiff is ambiguous.

[24] Each issue will be dealt with under their respective heading.

G *Right To Be Represented*

[25] The plaintiff alleged he was deprived from the right to be represented in the hearing and as such this is a breach of natural justice. The first defendant say it did not act contrary to the rules H of natural justice. In advancing his argument in the manner he did, the plaintiff is relying on Perkara 5.2.1 and Perkara 2.1.40 of FAM Code.

Item 5.2.1 of the FAM Code states:

I Tertuduh hendaklah hadir dan beliau boleh memilih Wakil Tertuduh bagi membantu beliau semasa Mesyuarat Jawatankuasa.

Item 2.1.40 of the FAM Code states: A

> Wakil Perayu atau Wakil Tertuduh bermakna Setiausaha Agung atau Setiausaha Kehormat atau Setiausaha Eksekutif atau Penolong Setiausaha Ahli atau Pasukan yang mewakili Perayu atau Tertuduh.

B

[26] The plaintiff stressed on the word "boleh memilih" mentioned in item 5.2.1 which confers undeniable right to the plaintiff to choose his representative in the proceedings. But what happens is as follows. On 2 April 2012, the plaintiff received a facsimile signed by the second defendant stating that the plaintiff can only be C represented by a representative pursuant to item 5.2.1 read together with item 2.1.40 of the FAM Code. At the same time, the letter stated that as the plaintiff is the Deputy President, he could only be represented by the Secretary General which is the second defendant himself. However, as the Secretary General was D the head of the FAM Secretariat who initiated the charges against the plaintiff, the Secretary General will not be representing the plaintiff and the plaintiff will not be represented at the hearing. Under those circumstances, the plaintiff say there was a fundamental breach of natural justice. How does that breach E happens? The plaintiff says in this manner:

(a) The said letter was an attempt to deny the plaintiff's right to choose his representative provided under the FAM Code. The plaintiff further say he was never given the opportunity to F decide whether he still wanted the Secretary General to represent him or to appoint another representative agreeable by the Secretariat. Instead, he was informed that he will not be represented.

(b) The second defendant is the one who drafted the charges and G decide whether the accused (the plaintiff) can be represented or not.

(c) If the second defendant already knew that he was the only choice that the plaintiff had to be his representative, why H can't the second defendant delegate the process of framing the charges to other person?

(d) Had the plaintiff been given the right to be represented, he may have somebody to back him up in the proceedings and I to mitigate on his behalf.

[27] The above submission seems to portray that the plaintiff appears alone and helpless before the Disciplinary Committee. But as the facts unfolded, this is not the case here. The first defendant deny there was a breach of natural justice. The argument taken by the first defendant is there is no mandatory provision in the FAM Rules and Regulations which states that come what may, the accused must be represented by anyone at the hearing.

[28] To resolve the issue, I must see what is the position of the law on the right to a legal representation in a disciplinary proceedings. In *Fraser v. Mudge* [1975] 3 All ER 78 at p. 79, Lord Denning stated the law in the following words:

> But it seems to me that disciplinary cases fall in to a very different category. We all know that, when a man is brought up before his commanding officer for a breach of discipline, whether in the armed forces or in ships at sea, it never has been the practice to allow legal representation. It is of the first importance that the cases should be decided quickly. If legal representation were allowed, it would mean considerable delay. So also with breaches of prison discipline. Those who hear the case must, of course, act fairly. They must let the man know the charge and give him a proper opportunity of presenting his case. But that can be done and is done without the matter being held up for legal representation. I do not think we ought to alter the existing practice. We ought not to create a precedent such as to suggest that an individual is entitled to legal representation.

In *Maynard v. Osmond* [1977] QB 240, Lord Denning said:

> But, even if he should not be entitled as of right, I should have thought that as a general rule the tribunal should have discretion in the matter. Legal representation should not be forbidden altogether. The tribunal should have discretion to permit him to have a lawyer if they think it would assist. They are masters of their own procedure: and, unless clearly forbidden, should have discretion to permit it.

[29] The above cases established that the right of an accused person to a legal representation in a disciplinary case is not an absolute right. Instead it is the discretionary power of the tribunal hearing the case whether to grant or not to grant a legal representation. The cases also seems to suggest that an accused person ought to be permitted to have a lawyer if that would assist him. In the case before me it is not correct for the plaintiff

to say FAM deprived the plaintiff the right to be represented. The second defendant cannot represent the plaintiff because there is a conflict of interest. If the plaintiff insist on having someone to represent him, he could have raised the issue before FAM Secretariat for them to consider. This was not done. Instead the plaintiff had brought four witnesses to defend his case. One of them was Tuan Haji Kamarudin bin Abdullah, a practising lawyer whose legal firm subsequently represented the plaintiff in this matter. From the minutes of the disciplinary proceedings, there was a notation that Tuan Haji Kamarudin had raised certain points of law during the hearing. Thus, the plaintiff have had a lawyer to assist him. In the circumstances, I agree with the defendant's submission that the plaintiff was not prejudiced in any way and no miscarriage of justice had taken place. Therefore, the plaintiff's contention of breach of natural justice must fail.

Burden Of Proof

[30] Under this heading, the plaintiff submits that the first defendant had failed to call any witness to testify in the proceeding to discharge the burden of proof. The plaintiff also submits that the Disciplinary Committee made an assumption that the plaintiff's statement tantamount to a "kilanan, rungutan atau perasaan tidak puashati". The plaintiff further submits that to shift the burden of proof to the accused person without the prosecutor having discharged his burden is a clear breach of natural justice as well as cardinal principle of adversarial system.

[31] In response, the first defendant submits they had proved their case by producing the newspaper article of Harian Metro carrying the offensive words. In addition to that, the plaintiff was also shown a compact disc that contained the press or media conference given by the plaintiff on 13 March 2012. The defendant also submits that the plaintiff did not deny making the press statements. The defendant further submits the plaintiff himself admitted at the hearing that he was satisfied with the way the disciplinary proceedings were carried out.

[32] I have read the minutes of the meeting held on 4 April 2012 wherein the hearing of the plaintiff's Disciplinary Case No. 27/2012 was one of the agenda. The minutes of the meeting, marked "AFD-11" exhibited in the defendant's affidavit in reply can be found at pp. 255-255Q. Whilst I agree in our adversarial system,

the prosecutor bears the burden of proving the case, but this is not a criminal trial. I notice the plaintiff's witness, Tuan Haji Kamarudin bin Abdullah had pointed out to the Disciplinary Committee the five elements to be proved in the charges. The gist of the two offences is about the plaintiff making an unauthorised statements criticising FAM. The plaintiff admitted to making the statements. The first defendant had proved that press conference is not one of the listed event on 13 March 2012. Neither could the plaintiff proved he had obtained a written consent from FAM to make the statements. As mentioned earlier the offending words tantamount to criticising the performance of national football team. Thus, a *prima facie* case had been made out against the plaintiff on both charges. The burden then shifted to the plaintiff to exculpate himself. Hence, I disagree with the plaintiff that there was a procedural impropriet at the hearing. I reject the plaintiff's contention.

Sentencing

[33] The sentence meted out against the plaintiff had been informed to him *vide* a letter dated 5 April 2012. The said letter stated as follows:

1. Bagi Pertuduhan 1, Yang Berbahagia Tan Sri digantung selama dua (2) tahun mengikut Kesalahan 18.5 Kod Tatatertib FAM Edisi 2011.

2. Bagi Pertuduhan 2, Yang Berbahagia Tan Sri digantung minimum enam (6) bulan bagi mengikut Kesalahan 18.3 Kod Tatatertib FAM Edisi 2011.

3. Kos mesyuarat hendaklah dibayar oleh Yang Berbahagia Tan Sri mengikut Perkara 5.6 Kod Tatatertib FAM Edisi 2011. Kos Mesyuarat Khas ke-21 Jawatankuasa Tatatertib FAM bagi Sesi 2010-2014 adalah RM2,2124 dan hendaklah dibayar kepada FAM dalam masa 14 hari.

4. Hukuman penggantungan ini berjalan berasingan dan ini bermakna penggantungan sepenuhnya ialah dua tahun enam bulan iaitu berkuatkuasa pada 5 April 2012 hingga 4 Oktober 2014.

5. Oleh kerana hukuman yang dikenakan adalah hukuman minimum, maka Yang Berbahagia Tan Sri tidak boleh merayu mengikut Perkara 7.1.2 (xii) Kod Tatatertib FAM Edisi 2011.

6. Semasa menjalani hukuman tatatertib, Yang Berbahagia Tan Sri tidak boleh melibatkan diri dalam Aktiviti Bolasepak mengikut tafsiran 2.1.31 di Peringkat Kebangsaan, Negeri, Daerah atau Kelab atau mengikut Perkara 6.13.5 Kod Tatatertib FAM Edisi 2011.

7. Kos mesyuarat hendaklah dijelaskan dalam masa 14 hari dari tarikh surat ini dikeluarkan iaitu pada atau sebelum jam 12.00 tengahari Jumaat 20 April 2012. Jika Yang Berbahagia Tan Sri gagal menjelaskan kos mesyuarat tersebut, maka Yang Berbahagia Tan Sri tidak boleh terlibat dalam semua Aktiviti Bolasepak sehinggalah kos mesyuarat tersebut dijelaskan.

[34] The plaintiff submits paras. 6 and 7 above are ambiguous and contradictory to each other. In para. 6, the plaintiff is prohibited from participating in any football activity, whereas in para. 7, the plaintiff is allowed to participate in any football activity if he paid the cost of the disciplinary proceedings within 14 days. This issue was addressed by the first defendant in para. 45 of the defendants' affidavit in reply. In the said para. 45, the first defendant states para. 7 of the letter dated 5 April 2012 is an advertent error by FAM and that item 6.13.5 FAM code and para. 6 of the said letter prevail over para. 7 ie, the sentence imposed upon the plaintiff still stand and valid. I accept FAM's explanation.

Mala Fide By The Second Defendant

[35] The plaintiff alleged the second defendant had acted *mala fide* from the inception of the charges and after the sentencing. The following evidence was adduced to establish *mala fide*:

(a) The plaintiff's opinion and advice about the FAM management were taken by the second defendant in an offensive manner.

(b) His relationship with the second defendant has turned sour.

(c) The disciplinary proceedings against the plaintiff spearheaded by the second defendant was tainted with irregularities and fundamental breach of natural justice shows the malicious intent of the second defendant towards the plaintiff.

(d) The second defendant framed the charge against the plaintiff on the flimsiest accusation of giving general statement to the media.

(e) After FAM announced the sentence, the second defendant has spoken to the media in a very negative manner. In an article by Berita Harian on 16 May 2012, the second defendant had stated that "tiada laluan buat Annuar membawa kes ke CAS andai tidak mendapat sokongan daripada 15 anggota Jawatankuasa Eksekutif FAM".

(f) The second defendant issued a warning letter dated 17 May 2012 to the plaintiff, reminding the plaintiff not to get involved in any football activity.

(g) The plaintiff had also been denied his right to attend football matches as VIP in his personal capacity as "Tan Sri".

[36] The second defendant through his affidavit has denied the allegations of *mala fide*. From the grounds listed (a) to (g) above, it appears to me that the plaintiff is saying the second defendant is bias towards him and going all out to fix him. The test of ascertaining bias can be seen in the Federal Court case of *Dato' Tan Heng Chew v. Tan Kim Hor & Another Appeal* [2006] 1 CLJ 577; [2006] 2 MLJ 293, which is whether there is a real danger of bias. I agree with the second defendant's submission that based on the facts of this case, there is no real danger of bias proven by the plaintiff. Bias is only plaintiff's own perception and illusion. I also agree with the second defendant that the plaintiff's allegation of *mala fide* does not exist. In the whole episode, the second defendant had acted in his official capacity as the Secretary General of FAM. As the Secretary General, he acts as the ears and eyes of FAM. When there is a press statement which criticising FAM and received wide media coverage, the second defendant could not just close his eyes and shut his ears. The decision to charge the plaintiff was not a personal decision of the second defendant. It is the decision of FAM. The offence was committed against FAM, not against the second defendant. The same goes to drafting the charges. Someone need to draft the charges. The charges are a serious matter. The first defendant must have cogent evidence before deciding to charge someone. Especially when that someone is a "Tan Sri". All these are taken into account. I had no doubt whatsoever that the second defendant was merely carrying out his official duty in wanting to

see the charges and the disciplinary proceedings were carried out fairly and impartially. That is why the second defendant was not involved at all in the proceedings. His official duty does not end with sentencing was passed on the plaintiff but continues. So, whatever action taken by the second defendant after the sentencing must be viewed as the second defendant wanted to ensure the plaintiff complied with the sentences imposed by FAM. On those grounds, the plaintiff's allegation of *mala fide* is baseless and must fail.

[37] In conclusion, I find the plaintiff has failed to satisfy this court that he is entitled to be granted the various declaratory orders. There is no reason for me to disturb the decision of FAM Disciplinary Committee. I therefore dismiss the plaintiff's application with cost.